BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GARY GEE, Claimant, v. LONGVIEW FIBRE COMPANY, Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2006-005130** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** FILED 09/01/2011

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Boise on March 10, 2009. Claimant, Gary Gee, was present in person and represented by Clinton Miner and Bryan Storer, of Boise. Defendant Employer, Longview Fibre Company (Longview), and Defendant Surety, Travelers Property Casualty Company of America, were represented by Eric Bailey, of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on May 25, 2011.

ISSUES

The issues to be decided by the Commission were narrowed at hearing and further refined in the parties' briefing as follows:

1. Whether Claimant suffered an injury as a result of an industrial accident on April 3, 2005.

2. Whether Claimant is entitled to medical benefits including cervical surgery as a result of an industrial accident on April 3, 2005.

3. Claimant's entitlement to temporary total disability benefits.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

Claimant asserts that he suffered an industrial accident while driving a hyster on April 3, 2005, which caused cervical injury and the need for subsequent cervical surgery. Defendants note that Claimant had significant pre-existing cervical spine disease and argue that he has proven no accident occurring on April 3, 2005, and that his subsequent cervical surgery was due to his pre-existing degenerative disease.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;

2. The pre-hearing deposition of Claimant taken June 12, 1995 in a separate case, admitted into evidence as Defendants' Exhibit 14;

3. The pre-hearing deposition of Claimant taken July 26, 2007;

4. The testimony of Claimant taken at the March 10, 2009 hearing;

5. Claimant's Exhibits 1 through 10[1] (including Exhibit 5, pp. 1-33) and Defendants' Exhibits 1 through 20, admitted at the hearing;

[1] Claimant's Exhibits 7 and 9 are identical.

6. Claimant's supplemental Exhibit 5, p. 34 (correspondence from David Verst, M.D., dated April 29, 2009), admitted into evidence pursuant to the Commission's Order Reopening and Closing Evidentiary Record filed August 19, 2009, and the parties' Stipulation Re: Claimant's Supplemental Disclosure and Defendants' Motion to Reopen, filed June 4, 2009; and

7. The post-hearing deposition of Paul Montalbano, M.D., taken by Defendants on January 26, 2011.[2]

After considering the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was 66 years old and resided in Twin Falls at the time of the hearing. He completed the 11th grade and served in the U.S. Army from 1959 to 1962. He has worked for Longview Fibre for more than 35 years as a forklift or hyster operator. Claimant has consistently operated a hyster with solid rubber tires and no springs. The concrete warehouse floor is uneven, having raised tracks across the aisle ways at many points, and producing a jolting ride for hyster operators. When moving loads too tall to see over, the hyster driver must back up, requiring that he turn his head to look back over his shoulder while remaining seated facing forward in the hyster. In 1995, Claimant estimated that nearly 80% of his hyster driving was backing up.

2. By early 1995, Claimant had developed low back, leg, arm, and neck weakness and pain. Diagnostic testing revealed spurring at C4-5 and various other degenerative changes, including apparent spontaneous bony ankylosis at C5-6. Eric Widell, M.D., opined:

[2] Exhibit 1 to Dr. Montalbano's deposition is his July 1, 2010 letter to Defendants' counsel which Dr. Montalbano discussed thoroughly during his deposition.

> I believe this man's problems have arisen occupationally. Axial loading in a rotated position of the spine is a classical means of leading to degeneration of the discs both in the neck and in the low back and this mechanism was operative over a period of some years while driving Hysters.

Defendants' Exhibit 19, p. 378. On March 16, 1995, Dr. Widell performed C4-5 diskectomy and fusion. Claimant's cervical surgery was successful and reduced, but did not entirely resolve, his arm, neck, and leg symptoms. Claimant continued to note some weakness in his right upper extremity and some numbness in his fingers and hands. He returned to his usual work duties as a hyster driver at Longview. His workers' compensation claim arising from his 1995 injury was resolved by lump sum settlement agreement. After recovering from surgery, Claimant resumed his usual activities, including hunting and fishing.

3. Claimant noted some ongoing symptoms of neck, arm, leg, and back pain for which he sought chiropractic treatment from time to time. He continued his usual work at Longview and was a dependable employee.

4. On April 3, 2006, Claimant was working at Longview cleaning up his work area. The concrete floor of the work area contained raised tracks. He was moving a load of pallets with the hyster. The load was too tall for him to see over, so he was driving the hyster backwards with his head turned to look over his shoulder. As he drove the hyster over the raised tracks, Claimant's neck popped and he felt nearly immediate weakness and then increasing pain progressing down his right arm and hand. He noted increased right leg weakness and leaned against the hyster for a few minutes. The weakness persisted. Claimant then drove his hyster to his supervisor and notified him that his neck popped while driving the hyster over the tracks and that something was wrong. Claimant asked for the rest of the day off from work so he could seek medical care. His supervisor granted his request, although the supervisor did not record the absence was due to a work-related injury.

5. On April 3, 2006, Claimant presented to Cole Johnson, D.O., with right arm pain. Claimant was concerned about possible heart attack and Dr. Johnson ordered an EKG which ruled out cardiac involvement. Dr. Johnson noted that Claimant was unable to recall any exacerbating event, specific trauma, or specific work that created his arm pain. Dr. Johnson suspected a shoulder condition and referred Claimant to Fredrick Surbaugh, M.D. Claimant's increased pain continued, however he returned to work the very next day.

6. On April 18, 2006, Dr. Surbaugh examined Claimant and determined that his arm symptoms were the product of his cervical condition. He noted Claimant's history of cervical surgery and that Claimant had "basically a cervical disaster several years ago … and was left with a spinal cord myelopathy type picture with mild weakness and numbness in his hands, and weakness in his lower extremities. Nevertheless, he has been able to work." Defendants' Exhibit 2, p. 3. After reviewing Claimant's cervical x-rays, Dr. Surbaugh concluded it was "amazing that he can work the way he is." Id. He ordered an MRI and referred Claimant to orthopedic surgeon David Verst, M.D. An appointment was scheduled for Claimant with Dr. Verst.

7. Claimant continued working and his neck and right arm pain worsened. By the end of work on Friday, April 21, 2006, Claimant's pain had worsened significantly and he had difficulty getting off his hyster.

8. On April 25, 2006, Claimant presented to Craig Manning, D.C. with severe low back pain. Dr. Manning recorded that: "Gary does not recall one specific moment of increased intensity though does note going to Dr. Cole Johnson on 4-3-06 due to left-sided neck P [sic] from work." Defendants' Exhibit 3, p. 21.

9. On April 26, 2006, Claimant underwent a cervical MRI which revealed moderate disc degeneration with severe central canal stenosis and apparent spinal cord entrapment at C3-4, solid bony fusions at C4-5 and C5-6, and moderate to severe degenerative changes at multiple cervical levels.

10. On May 1, 2006, Claimant presented to Lynn Hansen, D.C., with complaints of right arm numbness, weakness and pain. Dr. Hansen recorded: "he noticed the problem while at work on Friday 4-21-06. Patient stated that he was driving a hyster and was looking over his right shoulder when the symptoms started." Defendants' Exhibit 5, p. 29. Dr. Hansen reviewed the MRI report and secured an earlier appointment for Claimant with Dr. Verst. Dr. Hansen took Claimant off work recording: "No work until Surgeon's release due to work related injury and its severity." Defendants' Exhibit 13, p. 156.

11. On May 3, 2006, Claimant presented to Dr. Verst who recorded his complaints of severe progressive weakness and loss of coordination with associated severe pain with onset "following a work related accident he states he was turning head and was jolted while driving hoester [sic]." Defendants' Exhibit 6, p. 37. Dr. Verst assessed progressive spondylotic myelopathy with severe cervical stenosis. He recommended surgical decompression on an urgent basis noting: "I do feel on a more probable than not basis that his condition is related to driving the horster [sic] with head turned backward and jolted. Obviously, there is considerable degeneration secondary to previous surgical fusion as pre-existing this injury." Defendants' Exhibit 6, p. 39. Dr. Verst continued Claimant off work.

12. On May 26, 2006, Dr. Verst performed cervical surgery including C3-4 fusion and decompression. Claimant later estimated that Dr. Verst's surgery resolved about 80% of his weakness and pain in his leg, arm, and shoulder.

13. On October 2, 2006, Dr. Verst released Claimant to return to work as a hyster operator no more than 40 hours per week. Claimant promptly returned to work at Longview. On October 31, 2006, Dr. Verst released Claimant to unlimited hyster driving and Claimant resumed his usual work schedule at Longview, including overtime.

14. In July 2007, Claimant reported increasing low back and right leg symptoms. He was advised that he has lumbar disc problems, but his lumbar condition is not surgical and does not prevent him from driving a hyster. He makes no claim for benefits due to his lumbar condition in this proceeding.

15. At the time of hearing, Claimant was still experiencing some pain in his arm and shoulder. He could not lift his arms above his head without pain. He has continued to work for Longview as a hyster driver. He has difficulty turning his head due to his cervical fusions. Claimant has approximately $30,000.00 of outstanding medical bills from his 2006 cervical surgery which have been turned into collections.

16. Having reviewed the evidence and observed Claimant at hearing, the Referee finds that Claimant is a stoic worker and a credible witness.

DISCUSSION AND FURTHER FINDINGS

17. The provisions of the Idaho Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

18. **Accident and medical benefits.** The first two issues share a similar question of

medical causation and address whether Claimant suffered an injury from an industrial accident resulting in his need for cervical surgery.

19. A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Idaho Code § 72-102(17)(b) defines accident as "an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury." An injury is defined as "a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law." I.C. § 72-102(17)(a). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other treatment as may be reasonably required by the employee's physician or needed immediately after an injury and for a reasonable time thereafter. However, the employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

20. In the present case, Claimant asserts that he suffered an industrial accident on April 3, 2006, resulting in his need for cervical surgery. Defendants maintain that Claimant has failed to prove an industrial accident and that Claimant's cervical surgery resulted from the natural progression of a degenerative condition or arose from a non-industrial cause in April 2006.

21. As previously noted, Claimant is a credible witness and his testimony describing

the sudden onset of increased upper extremity weakness followed promptly by right arm and shoulder pain, after feeling a pop in his neck when driving the hyster backwards over tracks in the warehouse on April 3, 2006, is credible. The occurrence of an accident causing injury is not assumed merely with the onset of pain at work. However, "if the claimant be engaged in his ordinary usual work and the strain of such labor becomes sufficient to overcome the resistance of the claimant's body and causes an injury, the injury is compensable." Wynn v. J. R. Simplot Co., 105 Idaho 102, 104, 666 P.2d 629, 631 (1983). The accident requirement was satisfied in Spivey v. Novartis Seed Inc., 137 Idaho 29, 34, 43 P.3d 788, 793 (2002), when the employee felt a pop and burning in her shoulder while performing her normal work duty of reaching across a conveyor belt, and in Stevens-McAtee v. Potlatch Corp., 145 Idaho 325, 179 P.3d 288 (2008), when the employee felt progressive back discomfort after hitting a rough drain grate while driving a loaded hyster. In the present case, while the jolt sustained from backing over a raised track while driving a hyster with head turned may seem minimal, this incident is sufficient to satisfy the statutory definition of an accident if it causes injury.

22. Several medical experts have opined regarding the causation of Claimant's cervical condition and need for surgery in 2006.

23. Dr. Hansen. Dr. Hansen's note of May 1, 2006 taking Claimant off work, relates his injury to his work: "No work until Surgeon's release due to work related injury and its severity." Defendants' Exhibit 13, p. 156.

24. Dr. Montalbano. Neurosurgeon Paul Montalbano, M.D., reviewed Claimant's medical records and opined that given Claimant's 1995 C4-5 fusion, it was foreseeable that he would eventually need surgery at C3-4 due to the increased stress placed upon the next vertebral level. This phenomena is commonly referred to as next segment degeneration. Dr. Montalbano

testified that Claimant's need for surgery at C3-4 was the result of a chronic degenerative condition:

> Q. [by Defendants' counsel] … do you have an opinion, to a reasonable degree of medical probability, as to whether the need for the surgery that Mr. Gee underwent in the spring of 2006 was related to a specific traumatic incident occurring during that time?
>
> A. No. I think it—I do not believe it relates to a specific traumatic event. I believe it relates to a chronic condition.
>
> Q. I guess he reports that he started feeling symptomology with turning his head, or repeatedly turning his head, during the course of his work. Does that imply, necessarily, that there was some sort of damage done to the spine at that time?
>
> A. No. The majority of rotation occurs from the occiput and C1 joint, and then the C1 and C2 joint. So rotation of the neck doesn't really affect the level at C3-4.

Montalbano Deposition, p. 14, ll. 5-24. This exchange reflects Defendants' counsel describing the onset of Claimant's symptoms with repeated turning of the head, whereas Claimant described the onset of his symptoms when his neck popped, or snapped, as he drove the hyster over the tracks while his head was turned on April 3, 2006. Thus Dr. Montalbano's opinion apparently flows from an incomplete understanding of the onset of Claimant's symptoms; specifically, the discrete event which immediately preceded the commencement of his symptoms on April 3, 2006.

25. Interestingly, Dr. Montalbano also testified:

> Q. [by Claimant's counsel] Would he have likely come to your office without any symptoms?
>
> A. Probably not.
>
> Q. … Mr. Gee testified that he was backing a forklift and there was some type of bump, and that was onset of those symptoms. Is that what you read in the records that you've reviewed?

A. Similar to that, as well as just driving back and forth, you know, using the forklift truck over the years.

Q. So the only indication of onset was that incident that he described?

A. Correct.

Q. You've testified that he would have, ultimately, needed surgery on that level regardless?

A. Yes.

Q. But isn't it true that the records show that what brought about the evaluation of that level is the symptomology brought upon by the incident that he described?

A. I would agree with that, yes.

Q. And so the incident that he describes, would it be fair to say that that was an exacerbation of his condition that actually needed the surgery?

A. Yes.

Q. And, in fact, we know that he probably would have eventually needed the surgery, but this symptomology is what really accelerated the need for the surgery?

A. Correct.

….

Q. [by Defendants' counsel] Did it accelerate the need for the surgery or just bring him into contact with medical providers?

A. It brought him into contact with medical providers.

Q. He would have needed the surgery at that time regardless of the symptoms?

A. Correct.

Montalbano Deposition, p. 16, l. 18, through p. 18, l. 15.

26. Dr. Surbaugh. On June 9, 2006, Dr. Surbaugh responded to a letter from Defendants' counsel indicating that he did not believe Claimant's 2006 surgery was needed as a result of an industrial accident. Defendants' counsel's letter had identified no precipitating event

aside from Claimant driving the hyster and experiencing pain, whereas Claimant described the onset of his symptoms when his neck popped, or snapped, as he drove the hyster over the tracks while his head was turned on April 3, 2006. Thus Dr. Surbaugh's opinion also apparently flows from an incomplete understanding of the onset of Claimant's symptoms; specifically, the discrete event which immediately preceded the commencement of his symptoms on April 3, 2006.

27. Dr. Verst. Dr. Verst, Claimant's treating orthopedic surgeon, has ostensibly vacillated in his causation opinion. Upon first examining Claimant on May 3, 2006, Dr. Verst noted: "I do feel on a more probable than not basis that his condition is related to driving the horster [sic] with head turned backward and jolted. Obviously, there is considerable degeneration secondary to previous surgical fusion as pre-existing this injury." Defendants' Exhibit 6, p. 39. However, when responding to a June 12, 2006 letter from Defendants' counsel, wherein Defendants' counsel emphasized that Claimant reported no strenuous or heavy activity, no specific trauma or work that caused his allegedly increased pain on April 3, 2006, Dr. Verst checked the box indicating he did not believe that Claimant's cervical condition was the result of an industrial accident at work or that surgery was needed as a result of damage from an industrial accident.[3]

28. On April 29, 2009, Dr. Verst reaffirmed his initial conclusion on causation and opined:

> After reviewing all medical records and doing an evaluation of Mr. Gee, absent any other finding, on a more-probable-than-not basis, Mr. Gee's cervical condition in 2006 is the result of the industrial injury at Longview Fiber [sic].

[3] As with his letters to Dr. Montalbano and Dr. Surbaugh, Defendants' counsel's letter to Dr. Verst had identified no precipitating event aside from Claimant driving the hyster and experiencing pain, whereas Claimant described the onset of his symptoms when his neck popped, or snapped, as he drove the hyster over the tracks while his head was turned on April 3, 2006.

> Despite having degenerative changes at the C3-4 level that included myelomalacia of the spinal cord and gliosis along with global spinal stenosis, Mr. Gee apparently had no symptoms prior to his injury and also demonstrated no evidence of work absence. Mr. Gee's injury occurred as he was driving a hoister [sic] and while turning his head and hitting a bump he jolted his neck. This event activated his underlying condition and became symptomatic which led to myeloradiculopathy and the ultimate need for surgical intervention.

Claimant's Exhibit 5, p. 34.

29. Contrary to Dr. Verst's presumption, the record establishes that Claimant had longstanding residual symptoms prior to April 3, 2006. However, the record also establishes that prior to April 3, 2006, these symptoms were sufficiently mild that they did not preclude Claimant from working in his chosen field as a hyster driver, or pursuing his usual activities outside of work. He was able to perform his job as a hyster driver for Longview consistently and without cervical-related absences for approximately ten years prior to April 3, 2006.

30. Dr. Verst's opinion is more persuasive than Dr. Surbaugh's or Dr. Montalbano's opinions. Although Claimant had significant pre-existing degenerative conditions, he reliably and consistently performed his regular work duties for approximately ten years prior to his accident on April 3, 2006. This is a case where a mildly symptomatic pre-existing condition became acutely symptomatic and debilitating by reason of a discreet untoward event at work. "An employer takes an employee as it finds him or her; a preexisting infirmity does not eliminate the opportunity for a worker's compensation claim provided the employment aggravated or accelerated the injury for which compensation is sought." Spivey v. Novartis Seed Inc., 137 Idaho 29, 34, 43 P.3d 788, 793 (2002). If an industrial accident hastens the need for surgery, the surgery is compensable. Zapata 2010 IIC 0634, Rupp, 2006 IIC 0422.

31. Claimant has proven that he suffered an industrial accident causing cervical injury on April 3, 2006, while working for Longview and necessitating cervical surgery on May 26,

2006. Claimant has also proven his entitlement to medical benefits, including cervical surgery, for his industrial accident.

32. **Temporary disability benefits.** Claimant next alleges entitlement to temporary disability benefits. Idaho Code § 72-102 (11) defines "disability," for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho Code § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees "during the period of recovery." The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. Sykes v. C.P. Clare and Company, 100 Idaho 761, 605 P.2d 939 (1980).

33. In the present case, Dr. Hansen took Claimant off work on May 1, 2006. Dr. Verst released Claimant to return to work as a hyster driver 40 hours per week on October 2, 2006. Dr. Verst then released Claimant to unlimited hyster driving on October 31, 2006.

34. Claimant has proven his entitlement to temporary total disability benefits from May 1, 2006, until October 2, 2006. Claimant has also proven his entitlement to temporary partial disability benefits from October 2, 2006, until October 31, 2006.

CONCLUSIONS OF LAW

1. Claimant has proven that he suffered an industrial accident causing cervical injury on April 3, 2006, while working for Longview, necessitating cervical surgery on May 26, 2006.

2. Claimant has proven his entitlement to medical benefits, including cervical surgery, for his industrial accident.

3. Claimant has proven his entitlement to temporary total disability benefits from May 1, 2006, until October 2, 2006. Claimant has also proven his entitlement to temporary partial disability benefits from October 2, 2006, until October 31, 2006.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this __24th__ day of August, 2011.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___1st___ day of __September___, 2011, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

CLINTON E MINER / BRYAN S STORER
4850 N ROSEPOINT WAY STE 104
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ERIC S BAILEY
PO BOX 1007
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_____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GARY GEE, Claimant, v. LONGVIEW FIBRE COMPANY, Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2006-005130** **ORDER** FILED 09/01/2011

Pursuant to Idaho Code § 72-717, Referee Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __1st____ day of __September_____, 2011.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

___Recused_____
Thomas P. Baskin, Commissioner

_____/s/_____
R.D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __1st____ day of _September___, 2011, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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srn _____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GARY GEE, Claimant, v. LONGVIEW FIBRE COMPANY, Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2006-005130** **ERRATUM TO ORDER** FILED 09/07/2011

On September 1, 2011, the Findings of Fact, Conclusions of Law and Recommendation and Order were filed in the above-entitled case.

Upon review, an error was found in the Order. Accordingly, the Order is hereby corrected as follows.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven that he suffered an industrial accident causing cervical injury on April 3, 2006, while working for Longview, necessitating cervical surgery on May 26, 2006.

2. Claimant has proven his entitlement to medical benefits, including cervical surgery, for his industrial accident.

3. Claimant has proven his entitlement to temporary total disability benefits from May

1, 2006, until October 2, 2006. Claimant has also proven his entitlement to temporary partial disability benefits from October 2, 2006, until October 31, 2006.

4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matter adjudicated.

DATED this 7th day of September, 2011.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_Recused_____
Thomas P. Baskin, Commissioner

_____/s/_____
R. D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, 2011 a true and correct copy of the foregoing **Erratum to Order** was served via facsimile mail and regular United States Mail upon each of the following persons:

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